

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

WARREN THEODORE TRENHAILE,) CV F 05-0227 WMW REC HC
Petitioner,)
v.) FINDINGS AND
R. D. ANDREWS,) RECOMMENDATIONS RE
Respondent.) DISMISSAL OF PETITION

Petitioner is a federal prisoner proceeding pro se on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The petition is not filed on the form required by this court. Accordingly, on March 17, 2006, the court entered an order directing the Clerk of the Court to mail Petitioner a copy of the form for a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court further ordered Petitioner to complete this form, labeling it as his first amended petition, and to file the completed form with the court within thirty days.

Petitioner has not the first amended petition as required by the court, nor has he

1 otherwise responded to the court's order.

2 Local Rule 11-110 provides that a "failure of counsel or of a party to comply with
3 these Local Rules or with any order of the Court may be grounds for the imposition by the
4 Court of any and all sanctions . . . within the inherent power of the Court." District courts
5 have the inherent power to control their dockets and "in the exercise of that power, they may
6 impose sanctions including, where appropriate . . . dismissal of a case." Thompson v.
7 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
8 prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or
9 failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir.
10 1995)(dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258,
11 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment
12 of complaint); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)(dismissal for
13 failure to comply with court order).

14 In determining whether to dismiss an action for lack of prosecution, the court must
15 consider several factors: (1) the public's interest in expeditious resolution of litigation; (2)
16 the Court's need to manage its docket; (3) the risk of prejudice to the Respondents; (4) the
17 public policy favoring disposition of cases on their merits; and, (5) the availability of less
18 drastic alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v.
19 King, 856 F.2d 1439 (9th Cir. 1988). The court finds that the public's interest in
20 expeditiously resolving this litigation and the court's interest in managing the docket weigh
21 in favor of dismissal, as this case has been pending since February 17, 2005. The court
22 cannot hold this case in abeyance indefinitely awaiting compliance by Petitioner. The third
23 factor, risk of prejudice to Respondents, also weighs in favor of dismissal, since a
24 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
25 action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public
26 policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in

1 favor of dismissal discussed herein. Finally, Petitioner's failure to respond to the court's
2 order eliminates the possibility of alternatives.

3 **RECOMMENDATION**

4 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed for
5 Petitioner's failure to prosecute.

6 These Findings and Recommendations are submitted to the United States District
7 Court Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and
8 Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern
9 District of California. Within thirty (30) days after being served with a copy, any party may
10 file written objections with the court and serve a copy on all parties. Such a document
11 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."
12 Replies to the objections shall be served and filed within ten (10) court days (plus three days
13 if served by mail) after service of the objections. The court will then review the Magistrate
14 Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to
15 file objections within the specified time may waive the right to appeal the District Court's
16 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 IT IS SO ORDERED.

18 **Dated: November 30, 2006**
19 mmkd34

20 **/s/ William M. Wunderlich**
21 UNITED STATES MAGISTRATE JUDGE